

By: MuntanalS.J.R. No. 34

SENATE
A JOINT RESOLUTION

1 proposing a constitutional amendment giving the state a limited
2 right to appeal in criminal cases.

3 BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF TEXAS:

4 SECTION 1. Article V, Section 26, of the Texas Constitution
5 is amended to read as follows:

6 Sec. 26. The State is entitled to [~~shall have no right of~~]
7 appeal in criminal cases, as authorized by general law.

8 SECTION 2. This proposed constitutional amendment shall be
9 submitted to the voters at an election to be held on November 3,
10 1987. The ballot shall be printed to provide for voting for or
11 against the proposition: "The constitutional amendment giving the
12 state a limited right to appeal in criminal cases."

5/26/87

4/22/87
5/19/87

By: Montford S.J.R. No. 34
(In the Senate - Filed March 9, 1987; March 10, 1987, read first time and referred to Committee on Criminal Justice; April 22, 1987, reported favorably by the following vote: Yeas 4, Nays 3; April 22, 1987, sent to printer.)

COMMITTEE VOTE

	Yea	Nay	PNV	Absent
McFarland	x			
Henderson	x			
Farabee	x			
Glasgow	x			
Lyon		x		
Santiesteban		x		
Washington		x		

SENATE JOINT RESOLUTION

proposing a constitutional amendment giving the state a limited right to appeal in criminal cases.

BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Article V, Section 26, of the Texas Constitution is amended to read as follows:

Sec. 26. The State is entitled to [~~shall-have-no-right-of~~] appeal in criminal cases, as authorized by general law.

SECTION 2. This proposed constitutional amendment shall be submitted to the voters at an election to be held on November 3, 1987. The ballot shall be printed to provide for voting for or against the proposition: "The constitutional amendment giving the state a limited right to appeal in criminal cases."

* * * * *

Austin, Texas
April 22, 1987

Hon. William P. Hobby
President of the Senate

Sir:

We, your Committee on Criminal Justice to which was referred S.J.R. No. 34, have had the same under consideration, and I am instructed to report it back to the Senate with the recommendation that it do pass and be printed.

McFarland, Chairman

SENATE FAVORABLE COMMITTEE REPORT

Lt. Governor William P. Hobby
President of the Senate

²⁰
4/21/87 9:45am
(date)/(time)

Sir:

We, your Committee on CRIMINAL JUSTICE to which was referred
SJR 34 by Montford have on 4/21, 19 87, had the same
(measure) (sponsor) (hearing date)

under consideration and I am instructed to report it back with the recommendation (s) that it

- ☒ do pass and be printed
☐ do pass and be ordered not printed
☐ and is recommended for placement on the Local and Uncontested Bills Calendar.

A fiscal note was requested. ☐ yes ☐ no

A revised fiscal note was requested. ☐ yes ☐ no

An actuarial analysis was requested. ☐ yes ☐ no

Considered by subcommittee. ☐ yes ☐ no

Senate Sponsor of House Measure _____

The measure was reported from Committee by the following vote:

	YEA	NAY	PNV	ABSENT
McFarland, Chairman	<input checked="" type="checkbox"/>			
Henderson, Vice Chairman	<input checked="" type="checkbox"/>			
Farabee	<input checked="" type="checkbox"/>			
Glasgow	<input checked="" type="checkbox"/>			
Lyon		<input checked="" type="checkbox"/>		
Santiesteban		<input checked="" type="checkbox"/>		
Washington		<input checked="" type="checkbox"/>		
TOTAL VOTES	4	3	0	0

Mary Foley
COMMITTEE CLERK

Bob McFarland
CHAIRMAN

FILE

BILL ANALYSIS

By: Montford

S.J.R. 34

BACKGROUND

Currently, the state has no right of appeal in criminal cases, except the right to petition for appellate review of a decision of a court of appeals in a criminal case. See Tex. Const. Art. V, § 26; Art. 44.01, Code of Criminal Procedure. Texas is the only state that prohibits all prosecution appeals. This situation perpetuates erroneous legal determinations, encourages trial judges to rule in the defendants favor on legal questions, and can allow the acquittal of offenders if evidence is wrongfully excluded.

PURPOSE

As proposed, S.J.R. 34 amends the Constitution to give the state a limited right to appeal in a criminal case.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

- SECTION 1. Amends Article V, Section 26, Texas Constitution, to allow the state to appeal a criminal case as authorized by general law.
- SECTION 2. Provides for the proposed constitutional amendment to be submitted to the voters at an election to be held on November 3, 1987.

May 19 1987 Engrossed
Patsy Law
Engrossing Clerk

1987 MAY 20 2 14 PM

I hereby attached is a true and correct

SJR 34

which was

MAY 19 1987

from the Senate on

to the Committee on

Criminal Jurisprudence

Chief Clerk of the House

By: Montford
(Hury)

S.J.R. No. 34

SENATE JOINT RESOLUTION

proposing a constitutional amendment giving the state a limited right to appeal in criminal cases.

BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Article V, Section 26, of the Texas Constitution is amended to read as follows:

Sec. 26. The State is entitled to ~~[shall-have-no--right--of]~~ appeal in criminal cases, as authorized by general law.

SECTION 2. This proposed constitutional amendment shall be submitted to the voters at an election to be held on November 3, 1987. The ballot shall be printed to provide for voting for or against the proposition: "The constitutional amendment giving the state a limited right to appeal in criminal cases."

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE

April 20, 1987

TO: Honorable Bob McFarland, Chairman
Committee on Criminal Justice
Senate Chamber
Austin, Texas

In Re: Senate Joint Resolution
No. 34
By: Montford

FROM: Jim Oliver, Director

In response to your request for a Fiscal Note on Senate Joint Resolution No. 34 (proposing a constitutional amendment giving the state a limited right to appeal in criminal cases) this office has determined the following:

The resolution proposes a constitutional amendment which, if adopted, would amend Article V, Section 26 of the Texas Constitution to give the State a limited right to appeal in criminal cases. The proposed amendment would be submitted to the voters on November 3, 1987.

The cost of publication of the resolution to the State is estimated to be \$45,000.

No significant fiscal implication to the State or units of local government is anticipated.

Source: Secretary of State; State Prosecuting Attorney;
LBB Staff: JO, HES, JWH, GH, MC

RECEIVED

APR 20 1987

Senate Criminal Justice Committee

HOUSE COMMITTEE REPORT

1st Printing

By: Montford

S.J.R. No. 34

(Hury)

SENATE JOINT RESOLUTION

proposing a constitutional amendment giving the state a limited right to appeal in criminal cases.

BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF TEXAS:

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Sec. 26. The State is entitled to [~~shall have no right of~~] appeal in criminal cases, as authorized by general law.

SECTION 2. This proposed constitutional amendment shall be submitted to the voters at an election to be held on November 3, 1987. The ballot shall be printed to provide for voting for or against the proposition: "The constitutional amendment giving the state a limited right to appeal in criminal cases."

COMMITTEE REPORT

The Honorable Gib Lewis
Speaker of the House of Representatives

5/21/87
(date)

Sir:

We, your COMMITTEE ON CRIMINAL JURISPRUDENCE,

to whom was referred SSR 34 have had the same under consideration and beg to report
(measure)
back with the recommendation that it

- ☒ do pass, without amendment.
- ☐ do pass, with amendment(s).
- ☐ do pass and be not printed; a Complete Committee Substitute is recommended in lieu of the original measure.

A fiscal note was requested. ☒ yes ☐ no An actuarial analysis was requested. ☐ yes ☒ no

An author's fiscal statement was requested. ☐ yes ☒ no

~~The Committee recommends that this measure be placed on the (Local) or (Consent) Calendar.~~

This measure ☐ proposes new law. ☒ amends existing law.

House Sponsor of Senate Measure HURY

The measure was reported from Committee by the following vote:

	AYE	NAY	PNV	ABSENT
Hinojosa, Ch.	<input checked="" type="checkbox"/>			
Parker, V.C.				<input checked="" type="checkbox"/>
Waldrop, C.B.O.	<input checked="" type="checkbox"/>			
Danburg		<input checked="" type="checkbox"/>		
Evans, L.				<input checked="" type="checkbox"/>
Johnson, S.	<input checked="" type="checkbox"/>			
Morales	<input checked="" type="checkbox"/>			
Ovard	<input checked="" type="checkbox"/>			
Smith, T.	<input checked="" type="checkbox"/>			

Total
6 aye
1 nay
0 present, not voting
2 absent

Juan J. Hinojosa
CHAIRMAN
Laura Colfee
COMMITTEE COORDINATOR

BILL ANALYSIS

By: Montford

S.J.R. 34

BACKGROUND

The Texas Constitution provides that the State has no right to appeal in a criminal case, making Texas the only state that bans all prosecution appeals. This prohibition is viewed as a serious problem in the administration of criminal justice for several reasons: (1) On occasion, defendants are released because of questionable legal rulings excluding what may be legally admissible evidence; (2) Legal issues that have been wrongly decided by trial courts nevertheless stand as precedent, albeit unbinding, for police, prosecutors, and courts; and (3) Trial judges may have a tendency to resolve doubtful legal questions in favor of the defendant because such a ruling cannot harm the judge's reversal rate.

The Texas constitutional ban, which has been in place since 1876, had its genesis in the Federal Constitutional right not to be twice put in jeopardy for the same offense. In varying degrees, the federal government and all the states have enacted legislation to accommodate both a defendant's right to be free from multiple trials for the same offense and the state's right to appeal erroneous legal rulings. The focal point in this balance is that the prosecutor's right to appeal is exclusively upon legal, not factual issues.

The federal statute permits government appeals from orders dismissing an indictment or arresting judgment. However, the federal provision does not permit an appeal from the granting of a new trial or from an illegal sentence. Under the federal statute, the U.S. attorney must certify that the evidence "is substantial proof of a fact material in the proceedings" and requires appeals be filed within 30 days.

PURPOSE

The purpose of H.J.R. 54 is to amend the Texas Constitution to provide that the legislative process shall be vested with the authority to define the parameters of the state's right to appeal in criminal cases.

RULEMAKING AUTHORITY

It is the opinion of this Committee that this bill does not delegate any rulemaking authority to a state officer, agency, department or institution.

SECTION-BY-SECTION ANALYSIS

SECTION 1.

Amends Article V, Section 26, Texas Constitution, by deleting a provision stating that the state shall have no right of appeal in criminal cases and substituting in lieu thereof a provision providing that the state's right to appeal is to be prescribed by general law.

SECTION 2.

Provides that a constitutional amendment be submitted to the voters on November 3, 1987.

SUMMARY OF COMMITTEE ACTION

Pursuant to public notice being filed with the Journal Clerk and read by the Reading Clerk in accordance with the House rules, a public hearing was held on May 20, 1987. The Chair laid out S.J.R. 34, the Senate companion to H.J.R. 54 by Hury. The motion by Representative Morales to report the resolution favorably carried with a vote of 6 Ayes, 1 Nays, 0 PNV, and 2 Absent.

House Committee on Criminal Jurisprudence
May 22, 1987
MH

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE

May 21, 1987

TO: Honorable Juan J. Hinojosa, Chair
Committee on Jurisprudence
House of Representatives
Austin, Texas

In Re: Senate Joint Resolution
No. 34, as engrossed
By: Montford

FROM: Jim Oliver, Director

In response to your request for a Fiscal Note on Senate Joint Resolution No. 34, as engrossed (proposing a constitutional amendment giving the state a limited right to appeal in criminal cases) this office has determined the following:

The resolution proposes a constitutional amendment which, if adopted, would amend Article V, Section 26 of the Texas Constitution to give the State a limited right to appeal in criminal cases. The proposed amendment would be submitted to the voters on November 3, 1987.

The cost of publication of the resolution to the State is estimated to be \$45,000.

No significant fiscal implication to the State or units of local government is anticipated.

Source: Secretary of State; State Prosecuting Attorney;
LBB Staff: JO, HES, JWH, GH, AF

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE

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TO: Honorable Bob McFarland, Chairman
Committee on Criminal Justice
Senate Chamber
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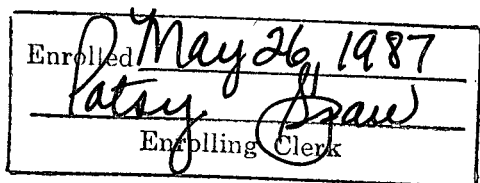
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LBB Staff: JO, HES, JWH, GH, MC

RECEIVED

APR 20 1987

Senate Criminal Justice Committee

5



S.J.R. No. 34

SENATE JOINT RESOLUTION

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S.J.R. No. 34

President of the Senate

Speaker of the House

I hereby certify that S.J.R. No. 34 was adopted by the Senate on May 19, 1987, by the following vote: Yeas 26, Nays 4.

Secretary of the Senate

I hereby certify that S.J.R. No. 34 was adopted by the House on May 25, 1987, by the following vote: Yeas 119, Nays 23.

Chief Clerk of the House

LEGISLATIVE BUDGET BOARD

Austin, Texas

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Committee on Jurisprudence
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LEGISLATIVE BUDGET BOARD

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Source: Secretary of State; State Prosecuting Attorney;
LBB Staff: JO, HES, JWH, GH, MC

RECEIVED

APR 20 1987

Senate Criminal Justice Committee

26
ee

S.J.R. No. 34

President of the Senate

Speaker of the House

I hereby certify that S.J.R. No. 34 (1) was adopted by the
Senate on May 19 (2), 1987, by the following vote:
Yeas 26 (3), Nays 4 (4).

Secretary of the Senate

I hereby certify that S.J.R. No. 34 (1) was adopted by the
House on May 25 (5), 1987, by the following vote:
Yeas 119 (6), Nays 23 (7).

Chief Clerk of the House

S. J. R. No.

34

By

M. H. H. H.

SENATE JOINT RESOLUTION

proposing a constitutional amendment giving the state a limited right to appeal in criminal cases.

3-9-87

Filed with the Secretary of the Senate

MAR 10 1987

Read and referred to Committee on CRIMINAL JUSTICE

APR 22 1987

Reported favorably

Reported adversely, with favorable Committee Substitute; Committee Substitute read first time.

Ordered not printed

Laid before the Senate

MAY 19 1987

Senate and Constitutional Rules to permit consideration suspended by:

unanimous consent

26 yeas, 4 nays

MAY 19 1987

Read second time, and ordered engrossed by:

unanimous consent

a viva voce vote

yeas, nays

Caption ordered amended to conform to the body of the bill.

MAY 19 1987

Senate and Constitutional 3 Day Rule suspended by a vote of 26 yeas, 4 nays.

MAY 19 1987

Read third time, and passed by 26 yeas, 4 nays.

Betty King

SECRETARY OF THE SENATE

OTHER ACTION:

May 19, 1987

Engrossed

5-19-87

Sent to House

Latsy Spaw

Engrossing Clerk

MAY 19 1987

Received from the Senate

MAY 20 1987

Read first time and referred to Committee on

Criminal Jurisprudence

MAY 21 1987

Reported favorably amended, sent to Printer

5:45 pm

MAY 22 1987

Printed and Distributed

11:23 pm

MAY 22 1987

MAY 23 1987

Sent to Committee on Calendars

2:21 pm

MAY 25 1987

Read second time (amended) and finally adopted

failed adoption by Record Vote of 119 yeas, 23 nays, 0 present not voting.

Read third time (amended) and finally adopted

failed adoption by a Record Vote of yeas, nays, present not voting.

Caption ordered amended to conform to body of resolution

MAY 26 1987

Returned to Senate.

Betty M. King

CHIEF CLERK OF THE HOUSE

MAY 26 1987

Returned from House without amendment.

Returned from House with amendments.

Concurred in House amendments by a viva voce vote yeas, nays.

_____ Refused to concur in House amendments and requested the appointment of a Conference Committee to adjust the differences.

_____ Senate conferees instructed.

_____ Senate conferees appointed: _____, Chairman; _____, _____, _____, and _____

_____ House granted Senate request. House conferees appointed: _____, Chairman; _____, _____, _____.

_____ Conference Committee Report read and filed with the Secretary of the Senate.

_____ Conference Committee Report adopted on the part of the House by: _____

{ a viva voce vote
_____ yeas, _____ nays

_____ Conference Committee Report adopted on the part of the Senate by: _____

{ a viva voce vote
_____ yeas, _____ nays

OTHER ACTION:

_____ Recommitted to Conference Committee

_____ Conferees discharged

_____ Conference Committee Report failed of adoption by: _____

{ a viva voce vote
_____ yeas, _____ nays

1937

1937

100

100